Khatijah bt Abdullah v PRB Sdn Bhd & Anor

HIGH COURT (MUAR) — ORIGINATING SUMMONS NO 23–1 OF 1997
JEFFREY TAN J
1 AUGUST 2008

Land Law — Transfer — Validity of — Fraud — Purported transfer of land by forged document — Whether transfer obtained by fraud or dishonesty — Whether there were bona fide merits in plaintiff's application — Whether transfer null and void

The plaintiff herein claimed that the transfer of her 12/16 undivided share of land held under GM 25 Lot 3058, Mukim Simpang Kanan, District of Batu Pahat, to the first defendant was obtained by fraud, and consequently sought an order to cancel the title to the said land of the second defendant, obtained by way of transfer from the first defendant. On the other hand, the defendants pleaded that the plaintiff sold the said land to the first defendant in 1984. It was the plaintiff's case that in February 1984, the said land was to be auctioned and that one Zulkifli bin Sulaiman helped the plaintiff to get the auction withdrawn. At the end of 1984, the plaintiff vacated her house and land to enable Zulkifli to erect a large single storey bread factory on the said land and the plaintiff did so out of gratitude for the help rendered by Zulkifli to discharge the charge. Zulkifli was said to have paid all monthly instalments after 1984 and the monthly instalments paid by Zulkifli were in actual fact his rent for his occupation of the plaintiff's land. The plaintiff further alleged that SP2 presented her a yellow document for her signature and that SP3 informed her that the said document was a form in connection with the laying of underground power cables. The plaintiff executed the said document which in fact, was a memorandum of transfer of the said land. It was only in 1996 that the plaintiff discovered that the said land had been transferred to the first defendant. The plaintiff maintained that the said land had neither been transferred nor sold to Zulkifli.

Held, dismissing the plaintiff's claim with costs:

(1) Unquestionably, the instrument of transfer supported the case of a transfer. But it was more than just an instrument of transfer per se, as all established facts and circumstances as a whole could not support the case of tenancy. The construction of a permanent building at

considerable cost was not consistent with tenancy that could be terminated at any time. Rather, the construction of a permanent building was consistent with ownership of land as opposed to any transient and/or impermanent occupation (see para 19).

(2) The length of time (six years) between the withdrawal of auction and presentation of transfer from the plaintiff to the first defendant was also not consistent with a fraudulent transfer. If it were true that the transfer were fraudulently obtained, then it would only stand to reason that the transfer would have been promptly presented for registration, for early presentation and registration would have been the order of the day, to register the transfer to the first defendant before any fraud would be discovered. It appeared that Zulkifli and/or the first defendant was in no hurry to present the transfer for registration for the simple reason that they had no reason to do so, which would not have been the case if the transfer to the first defendant were fraudulently obtained (see para 19).

(3) Furthermore, the terms and conditions of the alleged tenancy — without a definite term, could be terminated at any time, no rent for six years from 1990 — were also too out of the norm to be true. The amount of rent, being exactly the same as the monthly instalment, was also too coincidental. Nothing pointed to tenancy. On the other hand, all were consistent with transfer. Even the payment of quit rent, a liability of the proprietorship of land, by Zulkifli and/or the first defendant since 1985 was consistent with the exercise of ownership (see para 20).

[Bahasa Malaysia summary

Plaintif di sini menuntut bahawa pindah milik 12/16 bahagian tanahnya yang tidak dibahagi yang dipegang di bawah GM 25 Lot 3058, Mukim Simpang Kanan, Daerah Batu Pahat, kepada defendan pertama diperoleh melalui fraud, dan oleh itu memohon perintah untuk membatalkan hak milik defendan kedua terhadap tanah tersebut, yang diperoleh secara pindah milik daripada defendan pertama. Sebaliknya, defendan-defendan memplid bahawa plaintif menjual tanah tersebut kepada defendan pertama pada tahun 1984. Ia adalah kes plaintif bahawa dalam bulan Februari 1984, tanah tersebut sepatutnya dilelong dan bahawa seorang yang bernama Zulkifli bin Sulaiman menolong plaintif untuk menarik balik lelongan tersebut. Pada hujung tahun 1984, plaintif mengosongkan rumah dan tanahnya untuk membolehkan Zulkifli membina sebuah kilang roti satu tingkat yang besar di atas tanah tersebut dan plaintif berbuat demikian kerana rasa terima kasih terhadap pertolongan yang diberikan oleh Zulkifli untuk pelepasan gadaiannya. Zulkifli dikatakan telah membayar kesemua ansuran bulanan selepas tahun 1984 dan ansuran bulanan yang dibayar oleh Zulkifli

sebenarnya adalah sewa menduduki tanah plaintif. Plaintif selanjutnya mendakwa bahawa SP2 memberikan kepadanya satu dokumen berwarna kuning untuk ditandatangani dan bahawa SP3 memberitahunya bahawa dokumen tersebut merupakan borang yang berkaitan dengan pemasangan kabel kuasa bawah tanah. Plaintif menandatangani dokumen tersebut yang pada hakikatnya, adalah memorandum pindah milik tanah tersebut. Hanya pada tahun 1996, plaintif mendapat tahu bahawa tanah tersebut telah dipindah milik kepada defendan pertama. Plaintif mempertahankan bahawa tanah tersebut tidak dipindah milik mahupun dijual kepada Zulkifli.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Tidak dipertikaikan, instrumen pindah milik menyokong kes pindah milik. Tetapi ia adalah lebih daripada hanya instrumen pindah milik semata-mata, kerana kesemua fakta dan keadaan yang dibuktikan tidak boleh menyokong kes penyewaan. Pembinaan bangunan yang kekal pada kos yang banyak tidak konsisten dengan penyewaan yang boleh dibatalkan pada bila-bila masa. Sebaliknya, pembinaan bangunan kekal adalah konsisten dengan pemilikan tanah berbanding dengan apa-apa pendudukan sementara dan/atau tidak kekal (lihat perenggan 19).

(2) Tempoh masa (enam tahun) di antara penarikan balik lelongan dan penyerahan pindah milik daripada plaintif kepada defendan pertama juga adalah tidak konsisten dengan pindah milik secara fraud. Jika ia benar bahawa pindah milik diperoleh secara fraud, ia adalah hanya munasabah bahawa pindah milik tersebut akan diserahkan untuk pendaftaran secepat mungkin kerana penyerahan dan pendaftaran adalah perintah sewajarnya, untuk mendaftar pindah milik defendan pertama sebelum apa-apa fraud boleh ditemui. Jelas bahawa Zulkifli dan/atau defendan pertama tidak tergesa-gesa untuk menyerahkan pindah milik untuk pendaftaran semata-mata kerana mereka tidak mempunyai alasan untuk berbuat demikian, yang tidak mungkin terjadi jika pindah milik kepada defendan pertama diperoleh secara fraud (lihat perenggan 19).

(3) Malahan, terma-terma dan syarat-syarat penyewaan yang didakwa — tanpa tempoh yang ditetapkan, boleh dibatalkan pada bila-bila masa, tidak ada sewa untuk enam tahun dari tahun 1990 — juga adalah amat jauh dari benar. Jumlah sewa, yang sama jumlahnya dengan ansuran bulanan, adalah secara kebetulan. Tidak ada apa-apa yang mengarah kepada penyewaan. Sebaliknya, segalanya adalah konsisten dengan pindah milik. Malah pembayaran cukai tanah, yang merupakan tanggungan pemilik tanah, oleh Zulkifli dan/atau defendan pertama sejak 1985 adalah konsisten dengan pelaksanaan pemilikan (lihat perenggan 20).]

Notes

For a case on validity of transfer, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) para 4425.

Cases referred to

Sun Alliance Insurance Ltd v Scott [1992] TAS Lexis 1591, SC (refd)

Sharmizah bt Hashim (Fatimah Zahrah & Co) for the plaintiff.
Mastura bt Muhildin (Mimi Mastura & Associates) for the defendants.

Jeffrey Tan J:

[1] In this action, the plaintiff claimed that the transfer of her 12/16 undivided share of land held under GM 25 Lot 3058, Mukim Simpang Kanan, District of Batu Pahat ('land') to the first defendant was obtained by fraud, and consequently sought an order to cancel the title of the second defendant, obtained by way of transfer from the first defendant, to the said land. On the other hand, the defendants pleaded that the said land was sold by the plaintiff to the first defendant in 1984.

[2] Just as trial was to begin, both learned counsel (Sharmizah bt Hashim for the plaintiff, and Mastura bt Muhildin for the defendants) informed that the agreed issues (see p 4 of the notes of proceedings) were:

> (i) sama ada defendan pertama telah menebus tanah tersebut daripada Malayan Building Society Berhad (MBSB), and, (ii) sama ada 12/16 bahagian tanah tersebut telah dipindahmilik oleh plaintiff kepada defendan pertama berdasarkan representasi bahawa ianya untuk pembinaan kilang berserta kemudahan-kemudahan infrastruktur yang berkaitan.

But after all witnesses had testified, both learned counsel informed that the agreed issues had been amended (see p 32 of the notes of proceedings) to the following, namely:

> (i) sama ada pembayaran RM69,289.66 oleh Zulkifli atau defendan [pertama] kepada plaintif adalah wang sewaan tanah tersebut atau wang pembelian tanah tersebut, and, (ii) sama ada 12/16 bahagian tanah tersebut telah dipindah oleh plaintiff kepada defendan pertama berdasarkan ianya untuk pembinaan kilang termasuk kemudahan infrastructure.

[3] However, the agreed facts remained unchanged, which were as follows:

(1) Tanah yang dipegang di bawah GM25 Lot 3058 Mukim Simpang Kanan, Daerah Batu Pahat seluas 1E 1R 0P telah digadaikan oleh plaintif kepada Malaysia Building Society Bhd melalui Perserahan No: 70/79 Jilid: 29 Folio 16 bertarikh 8/1/1979;

(2) tanah tersebut telah dijadualkan untuk lelong awam pada 29/2/1984 tetapi telah dibatalkan; A

(3) melalui Perserahan No: 619/90 Jilid 454 Folio 56 bertarikh 5/3/1990, 12/16 bahagian tanah tersebut telah dipindahmilik daripada plaintif kepada defendan pertama; B

(4) tiada sebarang perjanjian jual beli ditandatangani antara plaintif dan defendan pertama;

(5) nilai 12/16 bahagian tanah tersebut pada 4/2/1990 seperti yang ditaksirkan oleh jabatan penilaian adalah RM137,000; C

(6) Borang 14A bertarikh 7/1/1990 di bawah Perserahan No: 619/90 Jilid 454 Folio 56 didaftarkan pada 5/3/1990 adalah borang pindah milik yang didaftarkan di Pejabat Tanah Daerah Batu Pahat untuk pindah milik daripada plaintif kepada defendan pertama; D

(7) melalui Perserahan No: 949/96 Jilid 601 Folio 36 bertarikh 14/2/96, 12/16 bahagian tanah tersebut telah dipindah milik daripada defendan pertama kepada defendan kedua.

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[4] In point of fact, those agreed facts were enlarged (see p 31 of the NP) by the addition of the following, after all witnesses had testified:

(8) the market value of the said land as at March 1984 was RM70,000, and, F

(9) the amount paid by the first defendant to the plaintiff over the years amounted to RM69,289.66.

[5] Of course, agreed facts prevail over oral testimony (see *Sun Alliance Insurance Ltd v Scott* [1992] TAS Lexis 1591, where it was held by the Supreme Court of Tasmania (full court) that it is not open to a court to depart from agreed facts and or find as a fact something which is at variance with agreed facts). In any case, the testimony of the witnesses (three for the plaintiff and two for the defendants) were as follows. G H

[6] The plaintiff (SP1) testified that her house — 109 Parit Besar, Batu Pahat — was erected on the said land. The owner of the other 4/16 undivided share of GM 25 was her brother. In February 1984, she got to know that the said land would be auctioned. Zulkifli bin Sulaiman (the husband of SD1) came to house 109 and said he could help to get the auction withdrawn. At the end of 1984, she vacated house 109, as Zulkifli wanted to erect a factory on the site occupied by house 109 and on the said land. Thereafter, she did not effect any payments towards redemption of the said land. Zulkifli effected I

the monthly instalments payable to MBSB 'sebagai sewa duduk rumah saya yang beralamat 109 ...'. The monthly instalments paid by Zulkifli were considered as rent. Zulkifli erected a large single storey bread factory on the said land. 'Atas jasa baik, Zulkifli menolong saya menarik gadaian tanah, saya telah benarkan Zulkifli bina kilang di atas tanah ... untuk itu, selain dari menarik gadaian, saya tidak menerima apa-apa balasan yang lain'. Her signature was on the memorandum of transfer (PB3), but she was not aware that it was a memorandum of transfer. She understood it to be some document for the laying of underground power cables to the factory. She executed that document in 10 Jalan Merbah, Batu Pahat, the house she moved to from house 109. Ali bin Saayan, who came with the document, said that Zulkifli asked her to execute the document. It was her husband (SP3) who informed her that the document was a form for the laying of underground power cables (see p 8 of the notes of proceedings). The entire land was charged to MBSB who retained the document of title. She utilised the entire loan. In 1996, when she wanted to return to house 109, she discovered that the said land had been transferred to the first defendant. Several months later, she reported to the police (see PB17) that she had permitted the erection of a factory but not transfer of the said land.

[7] Under cross-examination, the plaintiff said that after February 1984 there were no further attempts to auction the said land, as monthly instalments were paid by Zulkifli. She borrowed RM36,000 from MBSB. There was no tenancy agreement. The story of rental of the said land was not a fabrication. The factory erected was a permanent building. The distance between house 109 and house 10 was about 200 to 300 feet. She did not pass by house 109 after she vacated it. However, the plaintiff agreed with learned counsel for the defendants who proposed that no one would build a permanent building on rented land. The document brought by Ali for her signature was yellow in colour. The plaintiff disagreed that monies paid by Zulkifli to MBSB represented the purchase price of the said land. The tenancy of the said land was for an indefinite period, until she wanted the land back. But at the same time, the plaintiff agreed that a tenancy should have a fixed term. She could read Bahasa Malaysia, but she did not know that DB22 was a memorandum of transfer. After 1990, no further instalments were payable to MBSB. Learned counsel then proposed 'kalau sewa benar, antara 1990 — 1996, tidak ada sewa' to which the plaintiff disagreed. Learned counsel then proposed 'sebab tidak ada sewa, tidak ada berlaku sewa', to which the plaintiff replied 'bila habis bayar hutang, tidak ada sewa'. The plaintiff maintained that the said land was not been transferred or sold.

[8] Under re-examination, the plaintiff said that it was her husband who 'uruskan pinjaman' and that no rent was payable after 1990.

[9] Ali bin Saayan (SP2) who was summoned by the plaintiff had quite a different story to tell. SP2 testified that he only met the plaintiff on a singular occasion, when he delivered a letter from his lawyer employer, Salleh bin Abdul Rahman, to the plaintiff at Jalan Merbah, Batu Pahat. He was instructed to deliver the letter, which he did, and he departed without him having entered the plaintiff's house. According to SP2, no document was returned to him. SP2 was not cross-examined.

[10] The plaintiff's husband (SP3 — Mohamad bin Ibrahim) testified that the said land, which had been charged to MBSB as security for a loan of RM36,000, was to be auctioned. MBSB had obtained an order for the auction sale of the said land. But the said land was not auctioned on the day for auction (29 February 1984). Zuikifli settled the outstanding arrears. Zulkifli was his friend. To the question 'apa balasan kepada Zulkifi', SP3 said that Zulkifli wanted to rent the said land to erect a factory. The agreed rent was the monthly instalment of RM494. The period of the tenancy was unstated. It was an oral agreement. The only persons with knowledge of that tenancy were he and Zulkifli. In 1984, he moved to Jalan Merbah. Zuiklfli settled all arrears after withdrawal of the auction. Zulkifli settled the entire loan. In 1996, he informed Zulkifli that he wanted to return to 109, Jalan Parit Besar. It had been orally agreed that he could ask for the said land to be vacated at any time. As he proceeded to move to 109, he found it was occupied by one Ghazali bin Pardi. He contacted Zulkilfi. Zulkifli merely said 'itulah hakikatnya, kamu sudah jual'. He conducted a land search and found out about the transfer. He urged the plaintiff to lodge a police report. He provided the information stated in the police report. The plaintiff merely signed the police report. The plaintiff informed him that someone had come to the house and asked for her signature. He was given to understand, from Zulkifli, that the desired signature of the plaintiff was in connection with an application for some permission from Tenaga Nasional Bhd and or the Water Department. Never had the plaintiff been at the office of Mohd Salleh bin Rahman to execute any document. Never had he received any document from Mohd Salleh bin Rahman.

[11] Under cross-examination, SP3 said that Zulkifli had to pay the costs of auction, and legal costs to obtain the withdrawal of the auction SP3 said that he did not know that Zulkifli also had to pay the outstanding arrears of about RM18,000. The said land was charged in 1979. The loan was repayable over 15 years, by monthly instalments of RM494. He had no knowledge that Zulkifli paid a total sum of RM79,000. He did not receive the document of title after full settlement of the loan. He did not know to whom the title was handed. After 1984, all quit rents were paid by Zulkifli. SP3 disagreed that he was not interested in the whereabouts of the document of title for reason that the said land had been sold. SP3 also disagreed that

letters from MBSB were addressed c/o Zulkifli because the land had been sold. Quit rents were paid by Zulkifli because Zulkifli occupied the said land. SP3 also disagreed that he took time to commence legal proceedings because he knew the land had been sold. He knew a factory was erected. SP3 disagreed with the proposition of learned counsel that it would not seem reasonable to incur expense to erect a factory on land that could be taken back at any time. SP3 refuted that the plaintiff executed the memorandum of transfer, or that the story of tenancy was a fabrication.

Under re-examination, SP3 said that he did not receive any document on the payment of the outstanding arrears of RM18,000.

[12] Fatimah bte Abdullah (SD1) testified that she and her husband (Zulkifli bin Sulaiman), who died on 14 December 2003, were directors of the first defendant, from 1985 to 1995. She and Zulkifli read a proclamation of sale of the said land. Zulkifli informed her that he had purchased that land, that he had agreed with SP3 that he (Zulkifli) would settle the arrears, legal costs, costs of auction, and monthly instalments until full repayment, and that the said land would be transferred upon settlement of the loan. In 1989, they fully settled the loan. They paid the then redemption sum of RM36,772.66 (see defence bundle, p 14 — DB14) to MBSB. Zulkifli informed her that he had appointed a solicitor to conduct the transfer. They built a factory measuring 40 feet by 100 feet. Construction took place between 1984 and 1985. Exhibits D1(1–4) were photographs of that factory. In 1985, they extended the building. They expended RM50,000 towards the erection of the factory and RM10,000 towards the laying of underground power cables. Her husband paid all quit rents from 1985. DB25 was the resolution of the first defendant authorising the purchase of the said land. In December 1995, the said land was transferred to the second defendant without any monetary consideration, as the second defendant was a subsidiary of the first defendant. The second defendant then rented the said land to the first defendant. In 1995, she and her husband transferred 80,000 ordinary shares in the capital of the first defendant to Ghazali bin Pardi. She retained the balance 70,000 ordinary shares in the capital of the first defendant. All in all, from 1984 to 1989, Zulkifli had paid 50 monthly instalments to MBSB. The factory was erected with knowledge of the plaintiff. In 1997, the plaintiff lodged a caveat against the said land. DB26 was Zulkifli's affidavit in reply to that caveat.

[13] Under cross-examination, SD1 said that prior to the sale of shares to Ghazali, the only other director of the first defendant was her son. As majority shareholder, she had knowledge of the payments effected by the first defendant. The proclamation was for the sale of the whole of GM 25. The factory was erected without formal planning approval. The solicitor who conducted the transfer of the said land was one Salleh. The payments of

monthly instalments were not payments towards rent. It was due to a mistake that 12/16 undivided share but not the whole of GM 25 was transferred to the first defendant. SD1 refuted that the said transfer of the said land from the first defendant to the second defendant was not bona fide.

[14] Under re-examination, SD1 reiterated that the transfer of the said land from the first defendant to the second defendant was without monetary consideration for reason that the second defendant was a subsidiary of the first defendant.

[15] SD2 (Ahmad Sanusi bin Abu), a finance executive of Tenaga Nasional Bhd, merely testified that Zulkifli was, since 1985, the registered consumer of the three phases power supply to the factory.

[16] In her evidence, the plaintiff admitted that her signature was on the memorandum of transfer of the said land to the first defendant, but asserted that she knew not it was a memorandum of transfer when she signed it. But given the terms of the agreed issues and agreed result, it would not seem that whether the plaintiff knew or knew not that it was a memorandum of transfer when she signed it, could be that consequential and or that material, as the agreed result would follow the finding as to whether the sum of RM69,289.66 paid by Zulkifli and or the first defendant was towards rent or towards purchase of the said land. What was more material was which of the two conflicting versions held more probable truth in the light of the entire evidence.

[17] The essential story of the plaintiff was to the effect that in 1984 Zulkifli secured the withdrawal of auction of her land, that at the end of 1984 she vacated her house and land to enable Zulkifli to erect the said factory, that she did so out of gratitude for the help rendered by Zulkifli to discharge the charge ('menolong saya menarik gadaian tanah'), that Zulkifli paid all monthly instalments after 1984, that all such monthly instalments paid by Zulkifli were in actual fact his rent for his occupation of her land, that SP2 presented a document, yellow in colour, for her signature, that SP3 informed her that that document was a form in connection with the laying of underground power cables, that she executed that document at 10 Jalan Merbah, Batu Pahat, that she did not know that the document was a memorandum of transfer when she signed it, that in 1996 she discovered that the said land had been transferred to the first defendant, and that the said land had been rented out, but not sold.

[18] The plaintiff admitted that her signature was on the memorandum of transfer, but asserted that she did not know it was a memorandum of transfer when she signed it. The plaintiff explained that SP2 came to her house and

asked her to sign a yellow coloured document which she was given to understand from SP3 was a form in connection with the laying of underground power cables. That was the sum total of the explanation of the plaintiff to account for her signature on the memorandum of transfer. But how convincing was that explanation? First, consider that the plaintiff was not supported by SP2, who testified that he only met the plaintiff on a singular occasion, when he delivered a letter to the plaintiff at Jalan Merbah, Batu Pahat, and that no document was ever returned to him. In effect, the plaintiff was contradicted by SP2 who said that he merely delivered a letter, whereas it was the testimony of the plaintiff that SP2 asked for her signature on a yellow document. Next, consider that the plaintiff was not even supported by SP3 who testified that the plaintiff informed him that someone had come to the house and asked for her signature, which meant that SP3 was not around when the plaintiff put her signature on whatever document. Again in effect, the plaintiff was also contradicted by SP3 who said nothing about him giving any understanding to the plaintiff that the yellow coloured document was in connection with the laying of underground power cables, whereas it was the testimony of the plaintiff that SP3 gave her that understanding. So, how much of the testimony of the plaintiff could be relied upon? In fact, in relation to the alleged tenancy, the personal knowledge of the plaintiff was seriously questioned, for it was the testimony of SP3 that the only persons with knowledge of the tenancy were he and Zulkifli. Unsupported and contradicted, that was the state of the case of the plaintiff in relation to the memorandum of transfer.

[19] The same however could not be said of the story of the defendants, which was a consistent tale that the plaintiff had sold the said land to the first defendant, right from even when SP3 first confronted Zulkifli. Unquestionably, the instrument of transfer supported the case of a transfer. But it was more than just the instrument of transfer per se, as all established facts and circumstances as a whole could not support the case of tenancy. The construction of a permanent building at considerable costs was not consistent with tenancy that could be terminated at any time. Rather, the construction of a permanent building was consistent with ownership of land as opposed to any transient and or impermanent occupation. The length of time (six years) between the withdrawal of auction and presentation of transfer from plaintiff to first defendant was also not consistent with a fraudulent transfer. If it were true that the transfer were fraudulently obtained, then it would only stand to reason that the transfer would have been promptly presented for registration, for early presentation and registration would have been the order of the day, to register the transfer to the first defendant before any fraud would be discovered. It could be argued that the transfer could not be presented for registration before the settlement of the loan. But if it were true that the

transfer were fraudulently obtained, then it could not still be reconciled with the fact that Zulkifli and or the first defendant had taken six years to settle the loan and register the transfer to the first defendant, and or with the fact that the first defendant had taken another six years to transfer the said land to the second defendant. Rather, it appear that Zulkifli and or the first defendant were in no hurry to present the transfers for registration for the simple reason that they had no reason to do so, which would not have been the case if the transfer to the first defendant were fraudulently obtained.

[20] Furthermore, the terms and conditions of the alleged tenancy — without a definite term, could be terminated at any time, no rent for six years from 1990 — were also too out of the norm to be true. The amount of rent, being exactly the same as the monthly instalment, was also too coincidental. Nothing pointed to tenancy. On the other hand, all were consistent with transfer. Even the payment of quit rent, a liability of the proprietorship of land, by Zulkifli and or the first defendant since 1985 was consistent with the exercise of ownership.

[21] Tenancy was inherently improbable. But for the sake of argument, let it be accepted that it was a tenancy. According to the plaintiff, the rent was the monthly instalment payable to MBSB, and which rent would be payable for so long as monthly instalments remained unpaid — 'bila habis bayar hutang, tidak ada sewa'. According to SP3, the monthly rent was RM494. It was unchallenged evidence that the plaintiff vacated the said land at the end of 1984 and that the first defendant commenced construction of the factory in 1984. Hence, the first defendant would have entered into possession of the said land in 1984. If it were a tenancy, then monthly rent at rate of RM494 was payable from 1984. It was unchallenged evidence that the first defendant settled the entire loan in 1989. If rent were payable for so long as monthly instalments remained unpaid, then rent was no longer payable in 1990. Rent would have been payable only from 1984–1989. Hence, at the very most, the first defendant would have to pay rent for only six years (1984–1989), a sum that would have amounted to RM35,568. But it was an agreed fact that Zulkifli and/or the first defendant had in all paid RM69,289.66, which begs the question, why would Zulkifli and or the first defendant pay RM69,289.66 if the agreed rent amounted only to RM35,568? The figures would not add up to tenancy. Being so far in excess of rent, the payment of RM69,289.66 could not have been rent. On the other hand, the sum of RM69,289.66 practically tallied with the fair value of the said land, as it was an agreed fact that the value of the said land as at March 1984 was RM70,000.

A **[22]** It was so obvious that both questions could not be answered in favour of the plaintiff, whose claim was accordingly dismissed with costs.

Plaintiff's claim dismissed with costs.

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Reported by Ashgar Ali Ali Mohamed

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